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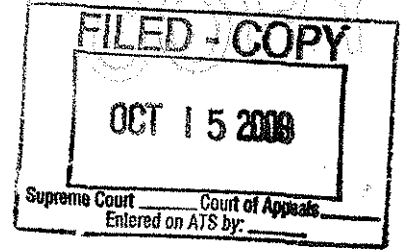
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
Plaintiff-Respondent,) NO. 35555
)
v.)
)
JOHN SCOTT MEIER,) REPLY BRIEF
)
Defendant-Appellant.)
_____)

REPLY BRIEF OF APPELLANT



APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

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STATEMENT OF THE CASE

Nature of the Case

John Meier raised several issues on appeal regarding the denial of his motion for return of property. He has asserted that: (1) the district court applied the incorrect legal burden with regard to motions in light of the procedural posture of this case; (2) the district court's findings were not supported by substantial, competent evidence; and (3) that the district court improperly relieved the State of any burden of proof with regard to five items of property that were never claimed by any party other than Mr. Meier.

This Reply Brief is necessary to address the State's sole contention in response – that Mr. Meier had the initial burden of proof to establish that he was in lawful possession of the property. The State attempts to create a distinction between the applicable federal rule and the Idaho rule which, upon a review of pertinent federal case law analyzing F.R.Cr.P. 41(g) and the history of the rule itself, proves illusory.

In addition, this Reply Brief is necessary to clarify that the State's assertion on appeal regarding who bore the pertinent burden of proof does not address the failure of the State to present any evidence at all with regard to any adverse claim of ownership as to several of the items of property that Mr. Meier was seeking to recover.

Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Meier's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Is there any meaningful distinction between the substantive provisions of I.C.R. 41(e) and its federal counterpart, renumbered at F.R.Cr.P. 41(g), such that this Court should not consider federal precedent construing motions for return of property as persuasive precedent in construing the relevant burdens of proof?
2. Regardless of the respective burdens of proof, does the failure of the State to present any evidence at all of an adverse claim of ownership to several pieces of property at issue in Mr. Meier's motion for a return of his property require that Mr. Meier be returned this property as his is the only claim of lawful ownership to these items?

ARGUMENT

I.

There Is No Meaningful Distinction Between The Substantive Provisions Of I.C.R. 41(e) And Its Federal Counterpart, Renumbered At F.R.Cr.P. 41(g), And Therefore This Court Should Consider Federal Precedent Construing Motions For Return Of Property As Persuasive Precedent In Construing The Relevant Burdens Of Proof

In its Respondent's Brief, the State has asserted that federal precedent apportioning the respective burdens of proof in motions for return of property brought under the equivalent federal rule should not guide this Court in determining the applicable legal standards under I.C.R. 41(e). (Respondent's Brief, pp.6-7.) The basis for the State's assertion is a purported distinction between the Idaho rule and the federal rule – that only the Idaho rule requires that the motion for return of property be grounded in the assertion that the defendant is entitled to legal possession of the property, and therefore the federal standards should not govern. (Respondent's Brief, pp.6-7.) The State's claims, and its legal analysis regarding the federal rule governing motions for return of property, fails for several reasons.

First, the plain language of the I.C.R. 41(e) merely sets forth the grounds that must be alleged in order to make out a *prima facie* case for the return of property being held by the State. In this context, all that is meant by the term "grounds" is the basis for the legal claim – i.e. that the defendant is lawfully entitled to the property. See "GROUND," BLACK'S LAW DICTIONARY 723 (8th ed. 2004). Once the defendant meets this initial burden of production so as to demonstrate that he or she has a viable cause of action, the subsequent allocation of the burden of proof as to the substantive merits of this claim remains a separate issue. See, e.g., *Smith v. State*, 146 Idaho 822, 827, 203 P.3d 1221, 1226 (2009) (recognizing statutory scheme in which the State bears

initial threshold burden to justify designation as a sexually violent predator, even though offender ultimately bore burden of proof in challenging designation); *State v. Lund*, 124 Idaho 290, 292, 858 P.2d 829, 831 (Ct. App. 1993) (once defendant establishes *prima facie* case of a violation of statutory right to speedy trial, burden of proof shifts to the State to show good cause for the delay).

As previously noted in his Appellant's Brief, Mr. Meier has already made out a *prima facie* case that he is lawfully entitled to his property because this property was seized from his possession when it was taken from his storage shed. (Appellant's Brief, pp.13-14.) This is consistent with federal case law on the federal counterpart to I.C.R. 41(e). While the State has attempted to distinguish the Idaho rule from F.R.Cr.P. 41(g), a review of the pertinent case law regarding the federal rule, along with a review of the text of this rule prior to the 2002 revisions, reveals that there is no significant substantive difference between these provisions.

As was noted in the Appellant's Brief, former F.R.Cr.P. 41(e) was renumbered in 2002, and its provisions are currently contained in F.R.Cr.P. 41(g). (Appellant's Brief, p.12 n.6.) The State correctly notes that the amended version of this rule does not contain the language requiring a motion for return of property to be made "on the ground that the person is entitled to lawful possession of the property" that is contained in I.C.R. 41(e). See I.C.R. 41(e); F.R.Cr.P. 41(g); Respondent's Brief, pp.6-7. However, the omission of this language from the express terms of the federal rule is irrelevant because this same requirement that the defendant seek the return of property based on a threshold showing of legal entitlement is still a requirement under the federal rule.

Prior to the 2002 amendments to the federal rule, it contained identical language to the language invoked by the State in an attempt to distinguish these rules. See, e.g., *Dusenbery v. U.S.*, 534 U.S. 161, 165 n.1 (2002) (setting forth the pertinent language of F.R.Cr.P. 41(e)).¹ In the Advisory Committee Notes regarding the 2002 amendments, the Committee makes clear that the renumbering and alterations to the rule were part of a “general restyling of the Criminal Rules” in order to improve internal clarity and consistency, and that the changes “were intended to be stylistic only.” See F.R.Cr.P. 41 Advisory Committee Note to the 2002 amendments. Therefore, no substantive change in the provisions of the rule upon renumbering was intended, and therefore the alterations did not effect any substantive change in what was required in order to make out a claim under the substance of the federal rule.

Even after the amendments to the federal rule, federal courts interpreted F.R.Cr.P. 41(g) to require an initial showing of lawful entitlement by the defendant. See, e.g., *Jackson v. U.S.*, 526 F.3d 394, 396 (8th Cir. 2008); *Ferreira v. U.S.*, 354 F.Supp.2d 406, 409 (S.D.N.Y. 2005). However, in cases such as the one at issue in this appeal, where the State has never brought any criminal charges in connection with property seized from an individual, proof that the property was taken from the defendant’s possession is sufficient to meet this initial burden of production and to shift the burden of proof to the State to establish that it has a legitimate right to retain the property because the property is contraband or the fruit of illegal activity. *Jackson*, 526 F.3d at

¹ This Court may also wish to note that, because former F.R.Cr.P. 41(e) contained identical language to I.C.R. 41(e), all of the federal case law cited by Mr. Meier in his Appellant’s Brief prior to the 2002 amendments to the federal rule would not be distinguishable at all on the ground asserted by the State in its Respondent’s Brief.

396-397; see also *Ensoniq Corp. v. Superior Court*, 77 Cal.Rptr.2d 507, 513 (Cal App. 1998) (due process requires that the State establish the property at issue to be stolen or contraband "in a situation where no charges are pending and no conviction has been obtained").

Despite the fact that F.R.Cr.P. 41(g) does not contain an express provision in the language of the rule that a motion for return of property must be made on the ground that the defendant is legally entitled to the return of the property at issue, this requirement is, and always has been, a component of the initially required showing by a defendant under the federal rule. As such, the State's attempt to distinguish I.C.R. 41(e) from the federal counterpart to this rule is unavailing.

II.

Regardless Of The Respective Burdens Of Proof, The Failure Of The State To Present Any Evidence At All Of An Adverse Claim Of Ownership To Several Pieces Of Property At Issue In Mr. Meier's Motion For A Return Of His Property Requires That Mr. Meier Be Returned This Property, As His Is The Only Claim Of Lawful Ownership To These Items

As was noted by Mr. Meier in his Appellant's Brief, the State presented no adverse claim of ownership to five of the items listed in the materials attached to the Toulouse affidavit. (Appellant's Brief, pp.18-20.) The State, in a footnote, has asserted that it will not address the merits of Mr. Meier's contention regarding the items to which no other individual claimed a right of possession. (Respondent's Brief, p.6.) However, because there was no other claim of a right of possession made regarding this property other than that made by Mr. Meier, there was no evidentiary basis upon which the district court could have concluded that Mr. Meier was not entitled to this property. See, e.g., *Jackson*, 516 F.3d at 396-397; *Bailey v. U.S.*, 508 U.S. 736, 739 (5th Cir. 2007)

(person from whom property is seized is presumed to have a right to its return); *U.S. v. Kaczynski*, 416 F.3d 971, 974 (9th Cir. 2005).

Idaho Criminal Rule 41(e) mandates that the district court base its decision on evidence. Specifically, the rule provides that, "The court *shall receive evidence* on any issue of fact necessary to the decision on the motion." I.C.R. 41(e). Given that Mr. Meier was the only party to present any evidence at all that he had a claim of lawful entitlement to the property omitted from the State's affidavits, the district court had no evidentiary basis to find against Mr. Meier with regard to these items of property, regardless of how this Court allocates the respective burden of proof.

CONCLUSION

Mr. Meier respectfully requests that this Court vacate the district court's order denying Mr. Meier's motion for the return of his property, and remand this case for further proceedings.

DATED this 13th day of October, 2009.


SARAH E. TOMPKINS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of October, 2009, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

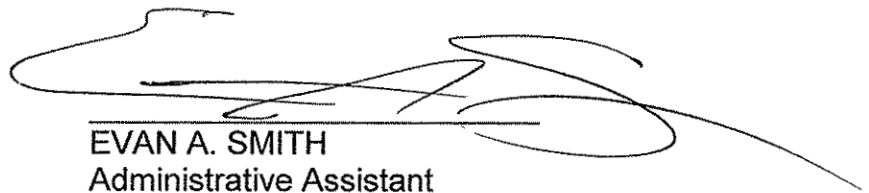
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